

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

_____	)	
DOMINGO PENA,	)	
	)	Civil Action No. 04-CV-40191-WGY
Petitioner,	)	
	)	
v.	)	
	)	
DAVID L. WINN, Warden,	)	
	)	
Respondent.	)	
_____	)	

**RESPONDENT'S MOTION TO DISMISS**

Pursuant to Fed. R. Civ. P. 12(b)(6), the Respondent, David Winn, hereby moves for dismissal on the ground that the Petition fails to state a claim upon which relief may be granted. In support of the motion, the Respondent submits the attached memorandum of law and exhibits.

Wherefore, the Respondent requests that the Petition be dismissed.

Respectfully submitted,  
MICHAEL J. SULLIVAN  
United States Attorney

By: /s/ Mark Grady  
MARK GRADY  
Assistant U.S. Attorney  
John Joseph Moakley U. S. Courthouse  
One Courthouse Way, Suite 9200  
Boston, Massachusetts 02210  
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CERTIFICATE OF COMPLIANCE

The Respondent takes the position that L.R. 7.1 requires “counsel” to confer and is not applicable where, as here, the opposing party is *pro se*. Alternatively, because Petitioner is a prisoner currently incarcerated in a federal correctional facility, counsel for the Respondent respectfully requests leave to file this Motion without a 7.1 conference.

/s/ Mark J. Grady  
Mark J. Grady  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 8<sup>th</sup> day of November 2004, the foregoing document was served upon Petitioner, Domingo Pena, Reg. No. 42808-083, FMC Devens, P.O. Box 879, Ayer, MA 01432 by mail.

/s/ Mark Grady  
Mark Grady